IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 92-2501
Non-Argument Calendar

D. C. Docket No. 92-139-CIV-ORL-19

CARL J. DUNCAN,

Plaintiff-Appellant,

versus

WARREN H. COBB, Judge,
Fifth District Court of Appeals;
JACQUELINE R. GRIFFIN, Judge,
Fifth District Court of Appeals;
CHARLES M. HARRIS, Judge
Fifth District Court of Appeals;
EARLE W. PETERSON, JR., Judge,
Fifth District Court of Appeals;
WINIFRED J. SHARP, Judge,
Fifth District Court of Appeals,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 2, 1993)

Before TJOFLAT, Chief Judge, FAY and BLACK, Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir. Rule 36-1.

"Costs taxed against plaintiff-appellant."

Judgment Entered: April 2, 1993
For the Court: Miguel J. Cortez, Clerk
By: /s/
Karleen McNabb
Deputy Clerk

ISSUED AS MANDATE: May 19, 1993

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CARL J. DUNCAN,

Plaintiff,

v. CASE NO. 92-139-CIV-ORL-19

WARRREN H. COBB, et al.

Defendants.

ORDER

This cause was considered upon the following matter:

Defendants' Motion to Dismiss and Memorandum of Law (Doc. No. 5, filed March 9, 1992); Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, and Plaintiff's Affidavit in Opposition to Defendant's Motion to Dismiss (Doc. No. 6 and 7, filed March 11, 1992).

Plaintiff brings a Civil Rights Action under 42 U.S.C. §§ 1983 and 1985 against Defendants, all judges of the District Court of Appeal, Fifth District of Florida. Plaintiff seeks injunctive relief mandating Defendants to reverse and vacate the Final Judgment Dissolving Marriage in Duncan v. Duncan, Case No. 89-12080-FD-D, Eighteenth Judicial Circuit, Brevard County. Defendants move to dismiss based on judicial immunity and lack of subject matter jurisdiction.

Plaintiff correctly maintains that judicial immunity does not bar injunctive relief against judicial officers acting in their judicial capacity. Wahl v. McIver, 773 F.2d 1169, 1172 (11th Cir. 1985) (citing Pulliam v. Allen, 466 U.S. 522 (1984). However, under the circumstances of this case, this Court lacks jurisdiction over Plaintiff's action.

"The jurisdiction possessed by district courts is strictly original." Hollins v. Wessel, 819 F.2d 1073, 1074 (11th Cir. 1987) (citing Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923)).[1] Further, review of final judgments of a state court in judicial proceedings is reserved to the Supreme Court of the United States pursuant to 28 U.S.C. § 1257. Id. (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983)). Opportunity to raise federal claims is given to plaintiffs through the appeals process in the state proceedings. Id.

Plaintiff has appealed his case to the Florida Fifth District Court of Appeal. Duncan v. Duncan, 590 So.2d 427 (Fla. 5th DCA 1991); Duncan v. Duncan, 571 So.2d 482 (Fla. 5th DCA 1990). Both cases were appeals from the circuit court of Brevard County that were affirmed without opinion. Plaintiff also petitioned the Florida Supreme Court for writ of mandamus which was denied

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[1] Hollins v. Wessel, 819 F.2d 1073 (11th Cir. 1987), held that plaintiff's civil rights action against a state court judge who presided over a mortgage foreclosure action in state court during the period in which plaintiff was incarcerated was properly dismissed by the district court for lack of subject matter jurisdiction.

without opinion. Duncan v. Cowart, 584 So.2d 997 (1991).

In Hollins, the Eleventh Circuit dismissed a civil rights action because the federal district court lacked subject matter jurisdiction. Hollins, 819 F.2d at 1074. Like the instant case, the underlying action in the Hollins §1983 action was a review of a state court proceeding. While the Hollins decision does not reflect the grounds which the plaintiff asserted in his appeal in the Florida district court of appeal prior to asserting his civil rights claim in the federal district court, the Eleventh Circuit nevertheless determined that the claim asserted in the federal court should have been made in the state appellate proceeding.

Therefore, on the authority of Hollins, this Court lacks subject matter jurisdiction in this case. Defendants' Motion to Dismiss (Doc. No. 5) is GRANTED, and Plaintiff's claim is dismissed.

DONE AND ORDERED at Orlando, Florida, this 21st day of April, 1992.

/s/
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record.

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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

Civil Action
File Number 92-139-CIV-ORL-19

CARL J. DUNCAN,

Plaintiff,

v.

WARREN H. COBB, et al.,

Defendants.
_____/

PLAINTIFF'S MOTION FOR REHEARING

Plaintiff moves the Court pursuant to

* * * *

(Text omitted as unnecessary. Purpose is to introduce following endorsed order.)

Denied 5-1-92

/s/ Patricia C. Fawsett

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IN THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 89-12080-FD-D

RITA KAY DUNCAN,

Petitioner,

vs.

CARL J. DUNCAN,

Respondent.
_____/

ORDER

All of the pending Motions by and between the Petitioner and the Respondent together with the Motions separately filed by Petitioner's attorney, having come on for consideration before the undersigned Judge on May 23, 1990, with GEOFFREY GREY STRANGE, ESQUIRE and Respondent, CARL J. DUNCAN, both being present by telephone, and the court having examined the record in this cause and having determined that an Appeal has been filed, and having further advised the parties of the limited jurisdiction of this Court during the pendency of the appeal, and the Court having heard the arguments of the respective parties and being otherwise fully advised, it is

ORDERED AND ADJUDGED as follows:

1. The Court will allow GEOFFREY GREY STRANGE, ESQUIRE, to withdraw as counsel of record for the Petitioner upon mailing to the undersigned Judge for filing with this case a written consent by Petitioner to such withdrawal.

2. Petitioner's attorney, having announced that Respondent has paid him the fees required under the Final Judgment, has withdrawn the Motion for Contempt and eliminated the necessity of the hearing thereon.

3. The Motion by Petitioner's attorney to tax additional fees and costs against the Respondent because of the Respondent's post-judgment motions and the like should be, and the same is, hereby denied.

4. Respondent's Motion for fees and expenses post-judgment is likewise denied.

5. All of the other Motions and requests for relief pending at this time should be, and the same are, hereby each denied.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida, the 23rd day of May, 1990.

/s/
EDWARD M. JACKSON
Circuit Judge

Copies furnished to:

Geoffrey Grey Strange, Esquire
1250 Eau Gallie Blvd., Suite G
Melbourne, Florida 32935

Carl Duncan
459 Inkwood Lane
Tallahassee, Florida 32310

Rita Kay Scott
c/o Winner Validation
250 Merriott Drive
Tallahassee, Florida 32399-4027

/s/
Hilder W. Bailey
Judicial Assistant

# # # # # # # #

IN THE CIRCUIT COURT IN AND
FOR BREVARD COUNTY, FLORIDA

CASE NO. 89-12080-FD-D

RITA KAY DUNCAN,
n/k/a RITA KAY SCOTT,

Petitioner,

vs.

CARL J. DUNCAN,

Respondent.
_____/

ORDER OF DISMISSAL

Various motions by the Respondent, CARL J. DUNCAN, having come on for consideration before the undersigned Judge on March 27, 1991 and the Court having reviewed the record in this cause and having heard the presentations by the Petitioner and Respondent, and being otherwise fully advised in the premises, finds that the Court does not have any subject matter jurisdiction over matters presented by the Respondent.

The premises considered, it is

ORDERED AND ADJUDGED as follows:

1. The Court dismisses the post-judgment matters presented by the Respondent for lack of subject matter jurisdiction, without prejudice to the Respondent presenting these matters to another Court.

2. The Final Judgment has been entered in this cause and the same affirmed by the District Court of Appeal for the Fifth District, thereby depriving the Court of jurisdiction as to the matters asserted by the Respondent.

DONE AND ORDERED in Chambers at Rockledge, Brevard County, Florida, this 29th day of March, 1991.

/s/
EDWARD M. JACKSON

Circuit Judge

Copies furnished to:

Carl J. Duncan
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Rita Kay Scott
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Tallahassee, Florida 32301

Geoffrey Strange, Esquire
1250 Eau Gallie Blvd., Suite G
Melbourne, florida 32935

/s/
Hilder W. Bailey
Judicial Assistant
Date: 4-1-91

# # # # # # # #

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

CARL J. DUNCAN,

Plaintiff,

Civil Action
File No. 92-139-CIV-ORL-19

v.

WARREN H. COBB,
JACQUELINE R. GRIFFIN,
CHARLES M. HARRIS,
EARLE W. PETERSON, JR.,
and WINIFRED J. SHARP,

Defendants.

_____/

MOTION TO DISMISS

DEFENDANTS, WARREN H. COBB, JACQUELINE R. GRIFFIN, CHARLES M. HARRIS, EARLE W. PETERSON, JR. and WINIFRED J. SHARP, by undersigned counsel, respectfully move this court to enter an order dismissing this cause on the following grounds:

1. These defendants, all judges of the District Court of Appeal, Fifth District of Florida, are sued for alleged acts or omissions arising solely from their judicial offices. Thus, these defendants are entitled to the protection of the doctrine of absolute judicial immunity.

2. This court lacks subject matter jurisdiction.

3. This action is barred by the provisions of the Eleventh Amendment to the Constitution of the United States.

In compliance with Local Rule 3.01(a), defendants submit the following legal memorandum in support of this motion:

MEMORANDUM OF LAW

1. JUDICIAL IMMUNITY

It is well-settled principle of law, derived from the common law of England, that judges are immune from civil liability for acts performed in the course of their official functions. *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 20 L.Ed. 646 (1872); *Meredith v. Van Oosterhout*, 286 F.2d 216 (8th Cir. 1960), cert. denied, 365

U.S. 835, 81 S.Ct. 749, 5 L.Ed.2d 745. In *Pierson v. Ray*, 386 U.S. 465, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), the United States Supreme Court has since reaffirmed and elucidated the doctrine of judicial immunity, expressly holding that the Civil Rights Act of 1871, now 42 U.S.C. § 1983, under which this cause was brought, did not abolish judicial immunity. In *Pierson*, the Court reasoned as followed:

> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall 335, 20 L.Ed 646 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences... . It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.

386 U.S. at 553-54

More recently, in *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978), *reh. denied*, 436 U.S. 951, 98 S.Ct. 2862, 56 L.Ed.2d 795, the Supreme Court reversed and remanded a decision of the United States Court of Appeals for the Seventh Circuit which held a judge of an Indiana court of general jurisdiction was not immune from a § 1983 suit under the doctrine of

judicial immunity for granting a mother's petition to have her minor daughter sterilized. The Supreme Court held the judge immune from liability for damages even if the judge's approval of the petition was in error, where, in view of the state court's broad general jurisdiction under state statutes, the judge had jurisdiction to act on the petition and did not act in the clear absence of all jurisdiction, there being no state statute or case law prohibiting the court from considering petitions for sterilization presented by the parents of minors. The Court further held that neither any procedural errors the judge may have committed not the lack of a special statute authorizing his approval of the sterilization petition renders him liable in damages. There the Court said:

> A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction. 13 Wall, at 351, 20 L.Ed. 646.

435 U.S. at 356

> A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. The Court made this point clear in Bradley, 13 Wall, at 357, 20 L.Ed. 646, where it stated: [T]his erroneous manner in which [the court's] jurisdiction was exercised, however it may have affected the validity of the act, did not make the act any less a judicial act; nor did it render the defendant liable to answer in damages for it at the suit of the plaintiff, as though the court had proceeded without having any jurisdiction whatever...

455 U.S. at 359

> The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial' one relate to the nature of the act itself, i.e.,

> whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity.

435 U.S. at 362.

In *Butz v. Economou*, 438 U.S. 478, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978), and *Chandler v. Judicial Council of the Tenth Circuit of the United States*, 398 U.S. 74 90 S.Ct. 1648, 26 L.Ed.2d 100 (1970), *reh. denied*, 399 U.S. 937, 90 S.Ct. 2248, 26 L.Ed.2d 809, the Court acknowledged the importance of judicial immunity and the need for total and absolute independence of judges in deciding cases or in any phase of the decisional process.

Other examples of the application of the doctrine of judicial immunity are *Moses v. Parwatikar*, 813 F.2d 891, 892-93 (8th Cir. 1987) (allegations that judge conspired with state officials was not sufficient to defeat absolute immunity of judge); *Eades v. Sterlinske*, 810 F.2d 723, 725-26 (7th Cir. 1987) (alleged acts of judge in dictating false certificate and causing alteration of trial transcript and docket sheet were entitled to absolute immunity); *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) (judicial immunity is unaffected by the motives with which the judicial acts are performed); *Eitel v. Holland*, 787 F.2d 995, 998 (5th Cir. 1986) ("A judge is not liable in damages for her judicial acts, even those done maliciously or corruptly, unless she acts in the clear absence of all jurisdiction"); *Holloway v. Walker*, 765 F.2d 517 (5th Cir. 1985) (judge immune from §1983 action alleging use of his judicial office to gain control of oil company even though many of his judicial acts were performed outside the courtroom); *Brinkman v. Johnston*, 793 F.2d 111 (5th Cir. 1986); *Hale v. Harney*, 786 F.2d 688 (5th Cir. 1986) (judge entitled to absolute immunity despite allegations that she was prejudiced against males and openly discussed the litigation involving the plaintiff at cocktail parties and functions; double costs and attorney fees awarded against plaintiff on appeal); and *Adams v. McIlhany*, 764 F.2d 294 (5th Cir. 1985) (judge who held mother in contempt of court for letter she wrote him intimating that he had dealt with her son harshly because she

could not afford to pay bribe, entitled absolute immunity).

2. LACK OF SUBJECT MATTER JURISDICTION

From a reading of Plaintiff's Complaint, it appears that he is seeking an order from this Court reviewing and reversing an action of a Florida appellate Court. With due respect, this Court lacks jurisdiction over that subject matter.

> While the lower federal courts were given certain powers in the 1789 [anti-injunction] Act, they were not given any power to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts. Thus from the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review in [The Supreme] Court of the federal questions raised in either system.

Atlantic Coastline R. Co. v. Brotherhood of Loc. Eng., 398 U.S. 281, 286, 90 S.Ct. 1739, 1743 (1970).

> It is well settled that federal district courts are without authority to review state court judgments where the relief sought is in the nature of appellate review. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed. 362 (1923); *Fortune v. Mulherrin*, 533 F.2d 21 (1st Cir.) cert. denied, 429 U.S. 864, 97 S.Ct. 170, 50 L.Ed.2d 143 (1967); *Atchley v. Greenhill*, 373 F.Supp. 512 (S.D. Tex. 1974). Where a constitutional issue could have been reviewed on direct appeal by the state appellate courts, a litigant may not seek to reverse or modify the state court judgment by bringing a constitutional claim under 42 U.S.C. §1983 (1982). *Sunn v. Dean*, 597 F.Supp. 79, 80 (N.D. Ga. 1984).

Anderson v. State of Colorado, 793 F.2d 262, 263 (10th Cir. 1986).

While it is true that "a State Court Judgment which violates settled legal principles may run afoul of the guarantees of the due process clause, especially [where] such a judgment has the effect of taking property from a citizen ...," *Reynolds v. State of Georgia*, 640 F.2d 702, 705 (5th Cir. Unit B 1981) (citations omitted), cert. denied, 454 U.S. 865, 102 S.Ct. 326, 70 L.Ed.2d 165 (1981), it is clear from the body and prayer of plaintiff's Complaint that he seeks appellate review in this Court of state court actions. The jurisdiction of a federal district court is original. The Constitution grants no power to this Court to "revise and correct the proceedings in a cause [originally brought in state court] ... ." *Malbury v. Madison*, 5 U.S. (1 Cranch) 137, 175, 2 L.Ed. 60 (1803), cited in *Reynolds v. State of Georgia, supra* at 707. Plaintiff's attempt to ground his claim upon Section 1983 is likewise ineffective to vest this Court with what is essentially appellate jurisdiction. *Am. Furniture Co. v. Intern Accommodation Supply*, 721 F.2d 478, 482 (5th Cir. 1981); *Lampkin-Asam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979).

The above-cited case law is grounded on notions of federalism found in the United States Supreme Court's jurisdiction to review decisions of a state supreme court for alleged errors of federal law. *Wood v. Orange County*, 715 F.2d 1543, 1545 (11th Cir. 1983), citing *Rooker v. Fidelity Trust Co.*, 203 U.S. 413, 415, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923). In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983), the Supreme Court reaffirmed *Rooker's* holding that federal district courts are prohibited from considering federal issues raised and inextricably intertwined in state court proceedings. The Supreme Court in *Feldman* also held that review is prohibited even to the United States Supreme Court where the plaintiff failed to raise his federal claim in state court, if an opportunity to raise such a claim existed. Here, Plaintiff does not allege that he raised any federal constitutional claims in the state courts. Accordingly, his present cause may properly be dismissed with prejudice, because United States Court review is barred.

3. ELEVENTH AMENDMENT BAR.

Where a party asks a federal court to declare a state court

judgment null and void, we should consider this as praying for an injunction enjoining its enforcement." *Gresham Park Community Organization v. Howell*, 652 F.2d 1227 (5th Cir. 1981) at 1236. This Court, however, lacks power to issue such an injunction. The Eleventh Amendment to the United States Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State ... ." Although "the Amendment by its terms does not bar suits against a State by its own citizens, [the Supreme] Court has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974). Florida has not consented to this type of lawsuit. Moreover, it is settled law that "the Eleventh Amendment by its terms clearly applies to a suit seeking an injunction," and will bar an injunction against that state whether or not the plaintiff seeks money damages. *Cory v. White*, 102 S.Ct. 2325, 2329 (1982). Thus, the Eleventh Amendment bars this Court from entertaining a suit for the "injunction" that plaintiff seeks against the state courts of Florida.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

/s/
RIVERS BUFORD, JR.
Assistant Attorney General
Florida Bar No. 0010070

DEPARTMENT OF LEGAL AFFAIRS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to CARL J. DUNCAN, 459 Inkwood Iane, Tallahassee, Florida, 32310 this 3rd day of March, 1992.

/s/
RIVERS BUFFORD, JR.

<rivers>Duncan/MD

# # # # # # # #

Act of Dec. 29, 1979, Pub. L. 96-170, s. 2, 93 Stat. 1284, U.S.C., Title 28, s. 1343(a):

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) [B]ecause of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

"(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United

States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

"(4) [T]o secure equitable or other relief under any Act of Congress providing for the protection of civil rights... ."